
UNITED STATES DISTRICT COURT**EASTERN DISTRICT OF TEXAS**

JASON M. SANDERS and
RODNEY SAULS, SR.,

Plaintiffs,

*versus*SKY TRANSPORT, LLC, and
SAID NOOR BARROW,

Defendants.

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CIVIL ACTION NO.1:20-CV-203

MEMORANDUM AND ORDER

Pending before the court is Defendants Sky Transport, LLC (“Sky Transport”) and Said Noor Barrow’s (“Barrow”) (collectively, “Defendants”) Motion to Exclude Officer Michael Trevor Whatley’s Texas Peace Officer’s Report from Evidence (#36). Plaintiffs Jason Sanders and Rodney Sauls, Sr. (“Plaintiffs”), filed a response (#44). Having considered the pending motion, the submissions of the parties, and the applicable law, the court is of the opinion that the motion should be granted in part and denied in part, as follows.

I. Background

This lawsuit arises out of a motor vehicle accident between two commercial motor vehicles (tractor-trailer rigs) that occurred during the early morning hours of September 19, 2019. At the time of the incident, Plaintiffs were team drivers for U.S. Cryo Carriers, Inc. Sauls was driving, and Sanders was asleep in the sleeping compartment of a U.S. Cryo Carriers, Inc., truck. The other vehicle was driven by Defendant Barrow, the sole owner of Sky Transport. Both vehicles were southbound on U.S. Highway 59 near Shepherd, Texas. Plaintiffs’ truck encountered

standing water, which splashed onto Barrow's windshield. As a result, Barrow felt his truck hydroplane to the right, causing it to clip the driver's side mirror of Plaintiffs' truck. Barrow's vehicle continued into the right lane after the impact and came to a stop on the right side of the road in high water. Plaintiffs' vehicle slowed and pulled into a nearby gas station.

Trooper Michael Trevor Whatley ("Whatley") arrived at the scene about an hour later. It is undisputed that he was not present when the incident occurred and that he did not observe the accident. Defendants assert that Whatley spoke to each driver at the scene and subsequently wrote his report based on the drivers' statements. The report, however, does not contain specific statements attributed to any party to the lawsuit. Barrow was issued a traffic citation for unsafe speed, which was later dismissed.

In the instant motion, Defendants seek to exclude the admission of Whatley's report as inadmissible hearsay. Specifically, they assert that it constitutes hearsay within hearsay because the information contained therein is based on statements made to Whatley by Plaintiffs and Barrow at the scene. Defendants further contend that the report is untrustworthy because "it contains unsupported conclusions" and because Whatley's "opinion is a mere guess as to how he thinks the accident occurred." Plaintiffs counter that the report is admissible under the hearsay exception for a statement of a party opponent, Federal Rule of Evidence 801(2), to the extent that it relies on statements made by Barrow.

II. Analysis

Under the Federal Rules of Evidence, hearsay, defined as any statement not made by a person while testifying in the current trial or hearing and that is offered to prove the truth of the matter asserted, is inadmissible. FED. R. EVID. 801(c), 802. The exception in Federal Rule of

Evidence 803(8), however, provides that a record or statement is admissible if it sets out “factual findings from a legally authorized investigation” and “the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.” FED. R. EVID. 803(8); *United States v. Noria*, 945 F.3d 847, 852 (5th Cir. 2019).

Police reports are generally admissible under Rule 803(8) as public records that set forth factual findings from a legally authorized investigation. *Bedford Internet Off. Space v. Travelers Ins. Casualty Co.*, 41 F. Supp. 3d 535, 544 (N.D. Tex. 2014); accord *Robert v. Maurice*, No. 18-11632, 2020 WL 4043097, at *6 (E.D. La. July, 17, 2020); *Ochoa v. Progressive Pipeling Construction, L.L.C.*, No. SA-13-CV-00122-FB, 2014 WL 12873124, at *2 (W.D. Tex. Sept. 12, 2014). “Certain information in a police report, however, such as witness statements offered to prove the truth of the matter asserted, are ‘hearsay within hearsay’ and are inadmissible unless each level of hearsay qualifies under one of the hearsay exceptions.” *Bedford Internet Off. Space*, 41 F. Supp. 3d at 544 (citing *Reliastar Life Ins. Co. v. Thompson*, No. M-07-140, 2008 WL 4327259, at *4 (S.D. Tex. Sept. 16, 2008)); see FED. R. EVID. 805 (“Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.”). Public records, including police reports, “are presumed to be trustworthy and admissible; therefore, it is the burden of the party opposing admission to demonstrate a lack of trustworthiness.” *Bedford Internet Off. Space*, 41 F. Supp. 3d at 544; *Ochoa*, 2014 WL 12873124, at *2. “The trustworthiness of a report admitted under [Rule 803(8)] depends on whether the report was compiled or prepared in a way that indicates that its conclusions can be relied upon.” *Bedford Internet Off. Space*, 41 F. Supp. 3d at 544 (citing *Moss v. Ole South Real Estate, Inc.*, 933 F.3d 1300, 1305 (5th Cir. 1991)).

Portions of police reports “that reflect the officers’ first-hand observations based on their investigations and experience are admissible.” *Bedford Internet Off. Space*, 41 F. Supp. 3d at 544; *see Robert*, 2020 WL 4043097, at *6; *Reliastar Life Ins. Co.*, 2008 WL 4327259, at *4. Information not based on the reporting officer’s personal knowledge, however, constitutes hearsay within hearsay and does not fall under the Rule 803(8) hearsay exception. *Ochoa*, 2014 WL 12873124, at *2; *see Automatique New Orleans, Inc. v. U-Select-It, Inc.*, No. 94-3179, 1995 WL 569226, at *3 (E.D. La. Sept. 25, 1995) (holding a police report was inadmissible because the officer who wrote the report “did not observe anything but merely recorded the observations of another person.”); FED. R. EVID. 602 (“A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.”). “[T]he Fifth Circuit has consistently excluded the portions of police reports that contained the officer’s opinions and conclusions.” *Meyer v. Jencks*, 513 F. Supp. 3d 706, 709 (E.D. La. 2021); *Fox v. Nu Line Transport, LLC*, 2020 WL 1536531, at *2 (W.D. La. Mar. 32, 2020); *see Robert*, 2020 WL 4043097, at *6 (“[P]ortions of [a] police report . . . referencing fault should be redacted [when a police officer] is not testifying as an expert witness.”).

Here, portions of the information in Whatley’s report, namely, the description and diagram of how the accident occurred, are based on statements made to him by Plaintiffs and Barrow. These portions contain descriptions of events that Whatley did not personally observe and that were relayed to him post-accident. It is apparent that Whatley merely recorded his interpretation of Barrow’s and Plaintiffs’ descriptions of the incident. Thus, the accident description and diagram are not admissible to the extent that Whatley lacked personal knowledge of the event. Whatley’s first-hand observations contained in the report, however, are admissible. Further, as

the police report does not contain specific statements made by any party to the lawsuit, the court rejects Plaintiffs' argument that the report is admissible under Federal Rule of Evidence 801(2)'s hearsay exception for a statement by a party opponent.

Furthermore, Whatley's report contains information regarding the identity of the parties' liability insurers. Federal Rule of Evidence 411 provides:

Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness's bias or prejudice or proving agency, ownership, or control.

FED. R. EVID. 411; *Johnson v. Lopez-Garcia*, No. 20-2024, 2021 WL 3630109, at *1 (E.D. La. Aug. 17, 2021); *Dempster v. Lamorak Ins. Co.*, No. 20-95, 2020 WL 5659546, at *2 (E.D. La. Sept. 21, 2020). Here, Defendants admit that Barrow was operating his truck in the course and scope of his employment by Sky Transport and that Sky Transport is vicariously liable for the conduct of Barrow. Thus, evidence of liability insurance is not necessary to prove agency, ownership, or control. There is also nothing to indicate that such evidence is necessary to prove bias or prejudice in this case. Moreover, the admission of evidence of liability insurance would violate the court's ruling on Plaintiffs' and Defendants' 1st Motions in Limine, both of which the court has granted. Therefore, the portions of the report indicating that the parties were insured at the time of the accident are inadmissible.

Whatley's report also contains a reference to the traffic citation Barrow received in connection with the accident. In federal court, evidence that one party to an automobile accident was issued a traffic citation or paid a fine pursuant to a traffic ticket is inadmissible if the party pleaded no contest to the citation or it was dismissed. FED. R. EVID. 410 (stating that a nolo contendere plea is not admissible against the party who made the plea in a civil case); *Meyer*, 513

F. Supp. 3d at 708; *Robert*, 2020 WL 4043097, at *6; *Bergeron v. Great W. Cas. Co.*, No. 14-13, 2015 WL 3505091, at *4 (E.D. La. June 3, 2015) (stating that federal courts “[a]ll agree that evidence of a traffic citation is only admissible if the defendant pleaded guilty to the citation.”); *Rhodes v. Curtis*, No. 04-476-P, 2006 WL 1047021, at *2 (E.D. Okla. Apr. 12, 2006) (“Evidence of traffic citations is only admissible in a subsequent civil proceeding if the defendant voluntarily and knowingly entered a plea of guilty.”); see *Hillyer v. David Phillips Trucking Co.*, 606 F.2d 619, 620 (5th Cir. 1979) (“Defendants concede that the [traffic] ticket was only admissible if [the defendant] made an admission against interest acknowledging that she was guilty of the charge.”) Here, there is no indication that Barrow pleaded guilty to the citation. Indeed, the citation was dismissed. Therefore, evidence of the traffic citation is inadmissible.

In sum, the court concludes that Whatley’s report is admissible, but only to the extent that it is based on Whatley’s personal observations, and that the portions based on the statements of others, referencing the parties’ insurance coverage, and mentioning Barrow’s citation are redacted.

III. Conclusion

Consistent with the foregoing analysis, Defendants’ Motion to Exclude Officer Michael Trevor Whatley’s Texas Peace Officer’s Report from Evidence (#36) is granted in part and denied in part. Plaintiffs are ordered to redact the report consistent with the version attached hereto as Exhibit A.

SIGNED at Beaumont, Texas, this 1st day of November, 2021.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE



125 EAST 11TH STREET, AUSTIN, TEXAS 78701-2483 | 512.463.8588 | WWW.TXDOT.GOV

Sun, 26 January 2020

STATE OF TEXAS §

This is to certify that I, Jim Hollis, am employed by the Texas Department of Transportation (Department); that I am the Custodian of Motor Vehicle Crash Records for such Department; that the attached is a true and correct copy of the peace officer's report filed with the Department referred to in the attached request with the crash date of Thu, 19 September 2019, which occurred in Liberty County; that the investigations of motor vehicle crashes by peace officers are authorized by law; that this Texas Peace Officer's Crash Report is required by law to be completed and filed with this Department; that this report sets forth matters observed pursuant to duty imposed by law as to which matters there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law.

A handwritten signature in blue ink, appearing to read "Jim Hollis", is located below the certification text.

Jim Hollis
Director, Crash Data & Analysis Section
125 East 11th Street
Austin, TX 78701-2483
1-844-274-7457



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OUR MISSION: *Connecting You With Texas*

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EXHIBIT A

Documents Produced by Defendants 000001

Law Enforcement and TxDOT Use ONLY

☐ FATAL ☒ CMV ☐ SCHOOL BUS ☐ RAILROAD ☐ MAB ☐ SUPPLEMENT ☐ ACTIVE SCHOOL ZONE

Total Num. Units	4	Total Num. Prns.	3	TxDOT Crash ID	17302326.1 / 2019462081
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Texas Peace Officer's Crash Report (Form CR-3 1/1/2018)

Mail to: Texas Department of Transportation, Crash Data and Analysis, P.O. Box 149349, Austin, TX 78714. Questions? Call 844/274-7457

Refer to Attached Code Sheet for Numbered Fields

*These fields are required on all additional sheets submitted for this crash (ex.: additional vehicles, occupants, injured, etc.).

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*Crash Date (MM/DD/YYYY) 09 / 19 / 2019	*Crash Time (24HRMM) 03:24	Case ID 2659357	Local Use
*County Name LIBERTY	*City Name	<input checked="" type="checkbox"/> Outside City Limit	
In your opinion, did this crash result in at least \$1,000 damage to any one person's property?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Latitude (decimal degrees) 30.28710	Longitude (decimal degrees) 095.12573
ROAD ON WHICH CRASH OCCURRED			
*1 Rdwy. Sys. US	*Hwy. Num. 59	2 Rdwy. Part 1	Block Num.
3 Street Prefix		* Street Name	
4 Street Suffix			
<input type="checkbox"/> Crash Occurred on a Private Drive or Road/Private Property/Parking Lot	<input type="checkbox"/> Toll Road/Toll Lane	Speed Limit 55	Const. Zone <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Workers Present <input checked="" type="checkbox"/> No	Street Desc.		
INTERSECTING ROAD, OR IF CRASH NOT AT INTERSECTION, NEAREST INTERSECTING ROAD OR REFERENCE MARKER			
At Int. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	1 Rdwy. Sys. CR	Hwy. Num. 381	2 Rdwy. Part 1
Block Num.		3 Street Prefix	
Street Name		4 Street Suffix	
Distance from Int. or Ref. Marker 75	<input checked="" type="checkbox"/> FT <input type="checkbox"/> MI	3 Dir. from Int. or Ref. Marker S	Reference Marker
Street Desc.		RRX Num.	
Unit Num. 1	5 Unit Desc. 1	<input type="checkbox"/> Packed Vehicle	<input type="checkbox"/> Hit and Run
LP State OH	LP Num. pvy6185	VIN 4V4NC9TH3CN541218	
Veh. Year 2012	6. Veh. Color RED	Veh. Make VOLVO	Veh. Model UNKNOWN
7 Body Style TT	<input type="checkbox"/> Pol, Fire, EMS on Emergency (Explain in Narrative if checked)		
8 DL/ID Type 2	DL/ID State OH	DL/ID Num. TG112145	9 DL Class 98
10 CDL End. 96	11 DL Rest. 98	DOB (MM/DD/YYYY) 01 / 01 / 1988	
Address (Street, City, State, ZIP) 3467 ORANGE HOUSE COLUMBUS, OH 43219			
Person Num.	12 Prsn. Type	13 Seat Position	Name: Last, First, Middle Enter Driver or Primary Person for this Unit on first line
1	1	1	BARROW, SAID NOOR
14 Injury Severity	Age	15 Ethnicity	16 Sex
N	31	A	1
17 Eject.	18 Restr.	19 Airbag	20 Helmet
1	1	1	97
21 Sol.	22 Alc. Spec.	Alc. Result	23 Drug Spec.
N	96		96
24 Drug Result	25 Drug Category	Not Applicable - Alcohol and Drug Results are only reported for Driver/Primary Person for each Unit.	
96	97		
<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Lessee			
Owner/Lessee Name & Address SKY TRANSPORT LLC, 3467 ORANGE HOUSE COLUMBUS, OH 43219			
Towed By J&J TOWING (281-592-7929)			
Towed To 1013 N WASHINGTON AVE, CLEVELAND TX			
Unit Num. 2	5 Unit Desc. 6	<input type="checkbox"/> Packed Vehicle	<input type="checkbox"/> Hit and Run
LP State MN	LP Num. 2218STM	VIN 1D4TV61528YA276637	
Veh. Year	6. Veh. Color WHI	Veh. Make UNKNOWN	Veh. Model UNKNOWN
7 Body Style TL	<input type="checkbox"/> Pol, Fire, EMS on Emergency (Explain in Narrative if checked)		
8 DL/ID Type	DL/ID State	DL/ID Num.	9 DL Class
10 CDL End.	11 DL Rest.	DOB (MM/DD/YYYY) / /	
Address (Street, City, State, ZIP)			
Person Num.	12 Prsn. Type	13 Seat Position	Name: Last, First, Middle Enter Driver or Primary Person for this Unit on first line
14 Injury Severity	Age	15 Ethnicity	16 Sex
17 Eject.	18 Restr.	19 Airbag	20 Helmet
21 Sol.	22 Alc. Spec.	Alc. Result	23 Drug Spec.
24 Drug Result	25 Drug Category	Not Applicable - Alcohol and Drug Results are only reported for Driver/Primary Person for each Unit.	
<input type="checkbox"/> Owner <input type="checkbox"/> Lessee			
Owner/Lessee Name & Address CUSMAN, CABDULLAHI AXMED, 6300 YORK AVE S APT 101 EDINA, MN 55435			
Towed By J&J TOWING (281-592-7929)			
Towed To 1013 N WASHINGTON AVE, CLEVELAND TX			

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ID 2659357TxDOT
Crash ID 17302326.1/2019462081

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DISPOSITION OF INJURED/KILLED	Unit Num.	Prsn. Num.	Taken To	Taken By	Date of Death (MM/DD/YYYY)	Time of Death (24HR:MM)

Damaged Property Other Than Vehicles			Owner's Name			Owner's Address		

Unit Num. 1	<input checked="" type="checkbox"/> 10,001+ LBS.	<input type="checkbox"/> TRANSPORTING HAZARDOUS MATERIAL	<input type="checkbox"/> 9+ CAPACITY	CMV Disabling Damage? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	28 Veh. Oper. 1	29 Carrier ID Type 1	Carrier ID Num. 02485217
Carrier's Corp. Name SKY TRANSPORT LLC				Carrier's Primary Addr. 3467 ORANGE HOUSE COLUMBUS, OH 43219			
31 Bus Type 0	<input checked="" type="checkbox"/> RGWW <input type="checkbox"/> GVWR 8 0 0 0 0 0	HazMat Released <input type="checkbox"/> Yes <input type="checkbox"/> No	32 HazMat Class Num.	HazMat ID Num.	32 HazMat Class Num.	HazMat ID Num.	33 Cargo Body Type 3
Unit Num. 2	<input checked="" type="checkbox"/> RGWW <input type="checkbox"/> GVWR 8 0 0 0 0 0	34 Trlr. Type 2	CMV Disabling Damage? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Unit Num.	<input type="checkbox"/> RGWW <input type="checkbox"/> GVWR	34 Trlr. Type	CMV Disabling Damage? <input type="checkbox"/> Yes <input type="checkbox"/> No
Sequence Of Events	35 Seq. 1 20	35 Seq. 2	35 Seq. 3	35 Seq. 4	Intermodal Shipping Container Permit <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Actual Gross Weight	Total Num. Axles

36 Contributing Factors (Investigator's Opinion)				37 Vehicle Defects (Investigator's Opinion)				Environmental and Roadway Conditions						
Unit #	Contributing	May Have Contrib.		Contributing	May Have Contrib.			38 Weather Cond.	39 Light Cond.	40 Entering Roads	41 Roadway Type	42 Roadway Alignment	43 Surface Condition	44 Traffic Control
1	60							3	2	97	3	1	3	17

INVESTIGATOR'S NARRATIVE AND DIAGRAM	Investigator's Narrative Opinion of What Happened (Attach Additional Sheets if Necessary)													
	<p>UNITS 1 AND 2 WERE SB ON US 59 [REDACTED] UNITS 3 AND 4 WERE SB ON US 59 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] #1</p> <p>[REDACTED] THE DITCH WHERE THE VEHICLE STOPPED, FACING SOUTH, UPRIGHT, WITH DAMAGE TO ITS RIGHT SIDE. [REDACTED] #3 HAD DAMAGE TO ITS LEFT SIDE.</p>													

Time Notified (24HR:MM) 0 3 2 4	How Notified DISPATCH	Time Arrived (24HRMM) 0 4 2 0	Report Date (MM/DD/YYYY) 09/20/2019
Invest. Comp. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Investigator Name (Printed) WHATLEY, MICHAEL TREVOR	ID Num. 15020	
ORI Num. T X D P S 1 8 0 0	*Agency DEPARTMENT OF PUBLIC SAFETY, STATE OF TEXAS		Service/ Region/DA H P 2 C 0 8

Total Num. Units	4	Total Num. Prests	3	TxDOT Crash ID	17302326.1 /2019462081
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Mail to: Texas Department of Transportation, Crash Data and Analysis, P.O. Box 149349, Austin, TX 78714. Questions? Call 844/274-7457

Refer to Attached Code Sheet for Numbered Fields

*=These fields are required on all additional sheets submitted for this crash (ex.: additional vehicles, occupants, injured, etc.).

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Documents Produced by Defendants 000004

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ID 2659357TxDOT
Crash ID 17302326.1/2019462081

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DISPOSITION OF INJURED/KILLED	Unit Num.	Prsn. Num.	Taken To	Taken By	Date of Death (MM/DD/YYYY)	Time of Death (24HR:MM)

Damaged Property Other Than Vehicles			Owner's Name			Owner's Address		

Unit Num. 3	<input checked="" type="checkbox"/> 10,001+ LBS.	<input type="checkbox"/> TRANSPORTING HAZARDOUS MATERIAL	<input type="checkbox"/> 9+ CAPACITY	CMV Disabling Damage? <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No	28 Veh. Oper. 1	29 Carrier ID Type 1	Carrier ID Num. 03060457
Carrier's Corp. Name U.S. CRYO CARRIERS LLC				Carrier's Primary Addr. 407 HUNTER PARK LN HOUSTON, TX 77024			
31 Bus Type 0	<input checked="" type="checkbox"/> RGWW <input type="checkbox"/> GVWR 8 0 0 0 0	HazMet Released <input type="checkbox"/> Yes <input type="checkbox"/> No	32 HazMat Class Num.	HazMat ID Num.	32 HazMat Class Num.	HazMat ID Num.	33 Cargo Body Type 4
Unit Num. 4	<input checked="" type="checkbox"/> RGWW <input type="checkbox"/> GVWR 8 0 0 0 0	34 Trlr. Type 2	CMV Disabling Damage? <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Unit Num.	<input type="checkbox"/> RGWW <input type="checkbox"/> GVWR	34 Trlr. Type	CMV Disabling Damage? <input type="checkbox"/> Yes <input type="checkbox"/> No
Sequence Of Events	35 Seq. 1 20	35 Seq. 2	35 Seq. 3	35 Seq. 4	Intermodal Shipping Container Permit <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Actual Gross Weight	Total Num. Axles

36 Contributing Factors (Investigator's Opinion)					37 Vehicle Defects (Investigator's Opinion)					Environmental and Roadway Conditions							
Unit #	Contributing	May Have Contrib.	Contributing	May Have Contrib.	Contributing	May Have Contrib.	Contributing	May Have Contrib.	38 Weather Cond.	39 Light Cond.	40 Entering Roads	41 Roadway Type	42 Roadway Alignment	43 Surface Condition	44 Traffic Control		

INVESTIGATOR'S NARRATIVE AND DIAGRAM	Investigator's Narrative Opinion of What Happened (Attach Additional Sheets if Necessary)								Field Diagram - Not to Scale							

Time Notified (24HR:MM) 0 3 2 4	How Notified DISPATCH	Time Arrived (24HRMM) 0 4 2 0	Report Date (MM/DD/YYYY) 09/20/2019
Invest. Comp. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Investigator Name (Printed) WHATLEY, MICHAEL TREVOR		ID Num. 15020
ORI Num. T X D P S 1 8 0 0	*Agency DEPARTMENT OF PUBLIC SAFETY, STATE OF TEXAS		Service/ Region/DA H P 2 C 0 8